

### **REMARKS/ARGUMENTS**

Reconsideration of this application in light of the above amendments and following comments is courteously solicited.

Independent claim 36 and dependent claims 38-46 have been amended to comply with claim objections and the formal requirements of 35 U.S.C. 112, second paragraph. The scientific name in claim 40 is amended. Claims 38-46 now depend from independent claim 36. Claim 36 now clearly sets forth that the invention consists of one oil phase and a solid phase. It is submitted that claims 36 and 38-46 as amended comply with 35 U.S.C 112.

Claims 36, 38-62, 63-75 and 77 were rejected under 35 U.S.C 103(a) as being unpatentable over various combinations of approximately twenty-one (21) references. Applicant respectfully traverses the rejection.

It is submitted that independent claim 36 as amended defines over all of the prior art references. Concerning the main references applied to independent claim 36 and dependent claims 38-62, 63-75 and 77:

- U.S. Patent 6,086,859 to Calello et al. contains two oil phases (a skin protectant and nonvolatile/volatile oils), a wax phase and a pigment phase. Calello provides no specific guidance related to the use of an oil phase that is free of animal source oil, mineral source oil and synthetic source oil. Further evidence that Calello does not teach/suggest/motivate a composition free of the above can be seen by the Examples, wherein each Example contains a cosmetic with animal sources, mineral sources and synthetic

sources. Calello recites general guidance of hundreds of composition ingredients; while, only specifically teaching and preferring compositions with animal, mineral or synthetic ingredients. There is no suggestion/motivation/teaching of a finite number of identified, predictable solutions in Calello. The combination of Calello with 6 additional references; therefore, does not lead a person of skill in the art to a predictable solution that does not contain an animal, mineral or synthetic source. Calello gives indication that the animal/mineral/synthetic sources are critical and that the animal/mineral/synthetic sources will lead to success. There is no indication to follow a composition of which the critical sources above are exchanged for all vegetable sources; therefore, the Examiners interpretation of the additional 6 references leading to the rejection of the claimed invention is the result of impermissible hindsight reasoning gleaned from the applicants disclosure;

- As stated by the Examiner, Lebok teaches away from the substitution of C30-C45 alkylmethicone with natural wax. Furthermore, Rabe teaches a hydrogenated vegetable oil as a solid oil and C24-45 alkyl methicone (silicone wax) as a wax. It is well known within the art that a wax differs from a solid oil. As stated in Rabe, "waxes are similar in composition to fats and oils except that they contain no glycerides." Column 7, lines 20-23. Without glycerides, a wax is not functionally equivalent to an oil. In addition Rabe provides no suggestion/motivation/teaching of a finite number of identified, predictable solutions that would lead a person of skill in the art to the two-phased

animal/mineral/synthetic source free composition as claimed;

- Bonda, Kogyo, Wick, Neiman, Morane, Koulbanis, Hoffman, Okada, Papantoniou, Mills, Davis, Eteve, Hansenne and etc. provide no suggestion/motivation/teaching of a finite number of identified, predictable solutions that would lead a person of skill in the art to the two-phase animal/mineral/synthetic source free composition as claimed; and,
- The Examiner suggests that hydrogenated vegetable oils are synthetic. It is well known within the art that the source of hydrogenated vegetable oil is a vegetable. Hydrogenated vegetable oil, such as margarine, is the end product of a hydrogenation. As stated on page 9, lines 11-13, the invention relates to substances that are of vegetable origin.

In light of the foregoing, it is respectfully submitted that claim 36 and all of the claims, which depend therefrom patentably define over the art of record and the early issuance of a formal notice of allowance is respectfully requested.

An earnest and thorough attempt has been made by the undersigned to resolve the outstanding issues in this case and place same in condition for allowance. If the Examiner has any questions or feels that a telephone or personal interview would be helpful in resolving any outstanding issues which remain in this application after consideration of this amendment, the Examiner is courteously invited to telephone the undersigned and the same would be gratefully appreciated.

It is submitted that the claims as amended herein patentably define over the art relied on by the Examiner and early allowance of same is courteously solicited.

If any fees are required in connection with this case, it is respectfully requested that they be charged to Deposit Account No. 02-0184.

Respectfully submitted,

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Date: April 13, 2010